

REMARKS

**Claim 1 was rejected under 35 U.S.C. §103 for obviousness predicated upon Giovanni in view of Dinh et al.**

In the statement of the rejection, the Examiner admitted that in Giovanni's dryer the blowing means is **not** positioned in an air circulation path **between the gas cooler and evaporator**, as in the claimed invention. The Examiner pointed to Fig. 1 of Dinh et al., presumably intending Fig. 4, and identified blowing means 132 asserted to be positioned between evaporator 142 and cooler-condenser 150. The Examiner then concluded that one having ordinary skill in the art would have been motivated to modify Giovanni's device by positioning the blowing means in an air circulation path between the gas cooler and evaporator in view of Dinh "...for the purpose of exchange heat by removing moisture for a drying airflow" (ultimate sentence on page 2 of the November 12, 2004 Office Action). This rejection is traversed as factually and legally erroneous.

In imposing a rejection under 35 U.S.C. §103, it is incumbent upon the Examiner to make clear and particular factual findings as to a specific understanding or specific technological principle and then, based upon such factual findings, explain **why** one having ordinary skill in the art would have been motivated to modify particular prior art, in this case Giovanni's **clothes** dryer to arrive at the claimed invention. *In re Lee*, 237 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002); *Ecolchem Inc. v. Southern California Edison, Co.* 227 F.3d 1361, 56 USPQ2d 1065 (Fed. Cir. 2000); *In re Kotzab*, 217 F.3d 1365, 55 USPQ 1313 (Fed. Cir. 2000); *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999). Generalizations do not suffice;

only particular facts. *Ecolochem Inc. v. Southern California Edison, Co., supra; In re Rouffet*, 149 F.3d 1350, 47 USPQ2d 1453 (Fed. Cir. 1998).

In applying the above legal tenets to the exigencies of the this case, it is apparent that the Examiner did not discharge the initial burden of establishing the requisite facts-based motivation. Specifically, the Examiner announced a reason of “heat exchange by removing moisture for a drying airflow” as a reason to modify Giovanni’s apparatus. But the Examiner did not even attempt to factually establish (nor has the Examiner even asserted) that Giovanni’s device is not capable of exchanging heat by removing moisture for a drying air flow without the proposed modification. In other words, the Examiner did **not** factually establish **any reason** to modify Giovanni’s device. *In re Lee, supra*.

Secondly, Giovanni **requires** fan 15 to be positioned downstream of condenser 12 which, in turn, is positioned downstream of evaporator 14. Therefore, the Examiner’s proposed dramatic rearrangement of Giovanni’s device is inconsistent with the disclosure and, hence, it can not be said that one having ordinary skill in the art would have been realistically motivated to make the changes proposed by the Examiner. *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992); *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); *In re Schulpen*, 390 F.2d 1009, 157 USPQ 52 (CCPA 1968).

Furthermore, and **most significantly**, the Examiner appears to be attempting to combine apples with oranges. Giovanni’s device is a **clothes dryer**. Not so the Fig. 4 device of Dinh et al. Specifically, the Fig. 4 device of Dinh et al. is a commercial industrial dryer. However, in Fig. 5 Dinh et al. disclose a clothes dryer, but the blower 238 is positioned **upstream** of the evaporator. On the other hand, motor 16 of Giovanni is **not** even positioned in the path of the

circulating air. **Why** one having ordinary skill in the art would have been realistically impelled to surgically extract features from these disparate references for an attempted combination has not been factually established and explained on this record, thereby falling short of satisfying judicial requirements. *Ecolochem Inc. v. Southern California Edison, Co., supra; In re Rouffet, supra.*

Applicants would note that the above argued differences between the claimed invention and the applied prior art are **functionally significant**. Specifically, blower 14 of the present invention is **independent**, repeat **independent**, from the motor which rotates the drum. Further, blower 114 is positioned downstream of the evaporator in the circulation path. Because the temperature of the circulating air will be very high, particularly by employing CO<sub>2</sub> as the refrigerant, the temperature of blower 114 will be high when it is driven. However, in accordance with the claimed construction, blower 114 can be cooled effectively by the air from the evaporator, thereby avoiding overheating of blower 114. The present structure and advantages are neither disclosed nor suggested by the applied prior art.

Based upon the foregoing, it should be apparent that a prima facie basis to deny patentability to the claimed invention under 35 U.S.C. §103 has not been established. Applicants, therefore, submit that the imposed rejection of claim 1 under 35 U.S.C. §103 for obviousness predicated upon Giovanni in view of Dinh et al. is not factually or legally viable and, hence, solicit withdrawal thereof.

**Claims 2 and 3 were rejected under 35 U.S.C. §103 for obviousness predicated upon Giovanni et al. in view of Ebara, presumably intending to include Dinh et al.**

This rejection is traversed.

Claims 2 and 3 depend from independent claim 1. Applicants incorporate herein the arguments previously advanced in traversing the imposed rejection of claim 1 under 35 U.S.C. §103 for obviousness predicated upon Giovanni et al. in view of Dinh. The additional reference to Ebara does not cure the previously argued deficiencies in the attempted combination of Giovanni and Dinh et al.

**Moreover, Applicants separately argue the patentability of claim 2**, which specifies that the refrigerant is CO<sub>2</sub>. As previously pointed out, when employing CO<sub>2</sub> as a refrigerant that the temperature of the circulating air will be very high and, hence, the temperature of the blower will be high when driven. However, in accordance with the present invention, the blower can be cooled effectively by the air from the evaporator, thereby preventing the blower from overheating. Thus, the use of CO<sub>2</sub> exacerbates a problem addressed and solved by the claimed invention.

Based upon the foregoing, it should be apparent that the imposed rejection of claims 2 and 3 under 35 U.S.C. §103 for obviousness predicated upon Giovanni et al. in view of presumably Dinh et al. and Ebara is not factually or legally viable and, hence, solicit withdrawal thereof.

For the reasons set forth above, Applicants submit that the imposed rejections have been overcome, and that all pending claims in condition for immediate allowance. Favorable consideration is, therefore, solicited.

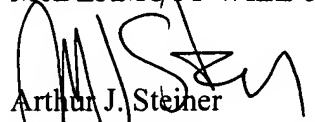
To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper,

**Application No.: 10/674,814**

including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Arthur J. Steiner  
Registration No. 26,106

600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
Phone: 202.756.8000 AJS:ntb  
Facsimile: 202.756.8087  
**Date: February 11, 2004**

**Please recognize our Customer No. 20277  
as our correspondence address.**